

1
2 John R. Benefiel (P 28970)
3 280 Daines Street
4 Suite 100 B
Birmingham, Michigan 48009-6244
248-644-1455

5 Charles F. Reidelbach, Jr. (167482)
6 PRESSEISEN & REIDELBACH
The Chamber Building
7 110 West "C" Street; Suite 714
San Diego, California 92101
619-234-4057
8 Attorneys for Defendant

9
10 IN THE UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 NEW AGE PRODUCTS, INC., Case No. 96 2129 J CGA

13 Plaintiff,

14 v

15 PROGRESSIVE INTERNATIONAL
16 CORPORATION,

17 Defendant.

18 _____
19 PROGRESSIVE INTERNATIONAL
CORPORATION,

20 Counterclaimant,

21 v

22 NEW AGE PRODUCTS, INC.,

23 Counterdefendant.

335-17-103
GROUP 1300
22

24 _____ /
25 DECLARATION OF WILLIAM FISHMAN

26 William Fishman, of 17632 Tam O'Shanter Drive, Poway,
27 California 92064, makes the following Declaration:
28

1 I am the President of Marketing Services, Inc., a consulting
2 services business I conduct in the field of marketing from my home
3 in Poway, California.

4 I make this Declaration under penalty of perjury. The
5 statements are made of my own personal knowledge and if called to
6 testify on the witness stand, I would testify in the same manner
7 as set forth herein.

8 Sometime in 1980, I had contacts with a Mrs. Marian Gillett,
9 then of 16950 Tesoro Drive, Rancho Bernardo, California,
10 concerning a kitchen product she had invented. This product was
11 a flexible kitchen cutting mat.

12 Mrs. Gillett and I agreed that, through my company, Market
13 Services, Inc., then operated from 11650 Iberia Place, San Diego,
14 California, we would jointly attempt to market her cutting mat.

15 Pursuant to that effort, in late 1980, I commissioned art
16 work to be developed for the product packaging insert, the product
17 to be sold under the trademark "CounterMaid", and attached as
18 Exhibit 1 is a true copy of that artwork.

19 Mrs. Gillett obtained a quotation for plastic sheets from a
20 supplier, John E. Stoneman, Inc. of Newport Beach, California, and
21 attached as Exhibit 2 is a true copy of a quotation she provided
22 me.

23 In July of 1981, I purchased 3,000 sheets of plastic from
24 John E. Stoneman, Inc. to be sold as CounterMaid cutting mats, and
25 attached as Exhibit 3 is a true copy of an invoice covering that
26 purchase.

27 Over the following months extending into 1982, the
28 CounterMaid product was offered for sale and sold through various

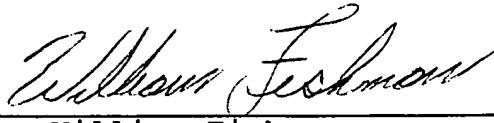
1 retail outlets in California and elsewhere.

2 I have at my residence a leftover quantity of the original
3 CounterMaid mats from the original 3,000 purchased in 1981.

4 At the request of John R. Benefiel, Defendants' counsel, on
5 or about October 30, 1997 I took samples of these CounterMaid mats
6 to OCM Laboratories of Anaheim, California for testing.

7 I declare under penalty of perjury that the foregoing is true
8 and correct.

9
10 Date: Dec 30, 1997


William Fishman

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COUNTER-MAID®

THE REUSABLE...

FLEXIBLE KITCHEN BOARDS!

KEEPS YOUR COUNTERTOP ALWAYS NEW!

HELPFUL HINTS

KEEP IT HANDY

- A "must" for every kitchen
- Keep one in dad's workshop too!
- Don't forget the camper.

EASY TO CLEAN

- Just rinse with water for most jobs.
- For greasy clean-up ... wipe with paper towel or stand between two plates in dishwasher.
- Will not absorb stains - grape, mustard, even Easter egg dye.

MAKE IT NON-SLIP AT THE KITCHEN COUNTER

- Spread 2 tsp. MINERAL OIL over clean counter and smooth out air bubbles (with straight edge tool such as a food turner). Press the oil out with long strokes until it adheres without slipping.
- Place a second one on top so you can still curl & funnel.

ANOTHER GILLETT PRODUCT FROM
MARKETING SERVICES, INC.
SAN DIEGO, CALIFORNIA

PATENT
PENDING

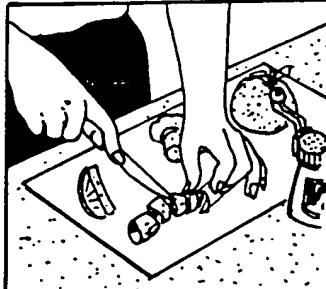
NEW!



PACK OF
3 FOR \$2.59

THE REUSABLE... **FLEXIBLE** **KITCHEN BOARDS**

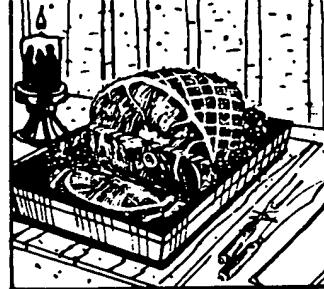
Protects your kitchen counters, cutting boards and chopping blocks from expensive permanent damage due to cuts and stains.



CUT & CHOP FOODS!
SALADS! CHEESE! MEAT!
VEGETABLES!
SAVES KITCHEN COUNTER



MORE SANITARY!
Easy to wash. Dishwasher safe.
Prevents bacteria build up. Non-toxic. Unbreakable.



CARVE ROASTS! SAVES KNIFE SHARPENINGS!
Remove roast from pan & carve it on your COUNTER-MAID®



IT'S SHAPEABLE!

Bend it, shape it into a funnel for any vessel. Ideal for preparing foods for
**CASSEROLES, SALADS,
WOK OR SKILLET**

Cut, slice and chop your foods right on a handy "COUNTER-MAID" kitchen board then use it to scoop and funnel it right into your cooking or serving dish.

ALSO IDEAL FOR:
PROTECTING SINKS FROM SCRATCHES WHEN POT WASHING.
KNEADING AND ROLLING DOUGH, SIFTING FLOUR (Won't stick)

John E Stoneman, Inc
2043 Westclif Drive
Suite 211
Newport Beach, CA
92660

Telex 181-577

Telephone
714 645-7261

August 29, 1980

Mrs. Marian Gillett
16950 Tesoro Drive
San Diego CA 92128

Dear Mrs. Gillett:

Listed below is confirmation of prices quoted verbally to you on August 27th.

| | | <u>10,000</u> | <u>30,000</u> | <u>50,000</u> |
|--------|-----------|---------------|---------------|---------------|
| 9 mil | 12" x 14" | 110.14/M | 92.44/M | 83.33/M |
| | 12" x 15" | 116.90/M | 98.65/M | 89.03/M |
| | 12" x 16" | 123.80/M | 104.85/M | 94.78/M |
| 10 mil | 12" x 14" | 120.76/M | 102.11/M | 92.20/M |
| | 12" x 15" | 130.08/M | 108.96/M | 98.47/M |
| | 12" x 16" | 135.84/M | 115.87/M | 104.82/M |
| 12 mil | 12" x 14" | 142.00/M | 121.40/M | 109.88/M |
| | 12" x 15" | 151.10/M | 129.69/M | 117.48/M |
| | 12" x 16" | 160.18/M | 137.95/M | 125.05/M |

These prices are figured without the special packaging.
Let us know if you need further information. We will
send some 10 mil samples as soon as available.

Yours truly,

Charlotte Hampton
Charlotte Hampton (aj)

CH:at

JES/INC

INVOICE

No. 9557

John E. Stoneman, Inc.
2043 Westcliff Drive
Suite 211
Newport Beach, CA
92660

Telex 181-577.

Telephone
14 645 726

Gillette
Marketing Services Inc.
11660 Iberia Place
San Diego, Ca 92128

Same

S O - O + O

| Invoice Date | Terms | Shipped | U. |
|--------------|-------|---------|--------------|
| 7-29-81 | 1% | | |
| Date Shipped | | | |
| 7-22-81 | | | Qty. Shipped |

3000
1000

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A service charge of 1% per month on the unpaid balance will be made on all past due accounts. Should this rate exceed the maximum rate that is lawful under the circumstances, the maximum rate shall apply. Customer also agrees to pay reasonable attorney's fees and other costs of collection.

Shipment Complete

ups Charge

| Newport Beach, Ca | | | |
|-------------------|------------|------|-------------------------------------|
| | Unit Price | Unit | Amount |
| | \$ 175.00 | Lot | \$ 175.00 |
| | | | <u>\$ 21.74</u> <u>\$ 196.74</u> |